

AMERICAN ARBITRATION ASSOCIATION

FRATERNAL ORDER OF POLICE

**AAA Case # 0-21-0002-3120
(Act 111 Interest Arbitration)**

and

CITY OF PHILADELPHIA

Arbitration Panel

Alan Symonette, Esq.
Neutral Arbitrator and Panel Chair

Ralph J. Teti, Esq.
Willig, Williams & Davidson
FOP-Appointed Arbitrator

Shannon Farmer, Esq.
Ballard Spahr LLP
City-Appointed Arbitrator

Appearances

FOR THE FOP:

Richard G. Poulson, Esq.
Deborah R. Willig, Esq.
Thomas M. Gribbin, Jr., Esq.
James R. Glowacki, Esq.
Louise F. Pongracz, Esq.
Willig, Williams & Davidson

FOR THE CITY:

Elliot Imani Griffin, Esq.
Catherine E. Lubin, Esq.
Ballard Spahr LLP

Cara E. Leheny, Esq.
Frank E. Wehr, Esq.
City of Philadelphia Law Department

Patrick Harvey, Esq.
Campbell Durrant Beatty

Aleena Y. Sorathia, Esq.
Ahmad Zaffarese

The undersigned arbitrators were duly appointed as the Board of Arbitration (Board or Panel) pursuant to the provisions of Section 4(b) of the Act of June 24, 1968, P.L. 237, as amended, 43 P.S. §217.4(b) (Act 111) and the procedures of the American Arbitration Association. Hearings in this matter were conducted on June 21-25 and July 19, 23, 26, 27, 28, 2021, in Philadelphia, Pennsylvania, at which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The Panel acknowledges that the parties agreed to waive the time limits under Act 111. Following executive sessions of the Arbitration Panel, the following Award was adopted by a majority of the Panel.

BACKGROUND

This Act 111 interest arbitration was conducted under the dictates of the Pennsylvania Intergovernmental Authorities Act (PICA Act), which created the Pennsylvania Intergovernmental Cooperation Authority (PICA). The PICA Act requires that the City develop, at least annually, five-year financial plans that provide for balanced budgets and must be reviewed and approved by PICA. The City is further required to undertake “a review of compensation and benefits” and to ensure that expenditures, including those for employee wages and benefits, are balanced with revenues. 53 P.S. § 12720.102(b)(1)(iii)(H); 12720.209(b) and (c). Under the PICA Act, a failure on the part of the City to comply with such requirements would result in the mandatory withholding of state funding and tax revenues designated for the City.

Most relevant for this Panel, Section 209(k) of the PICA statute, entitled “Effect of plan upon certain arbitration awards,” requires that, prior to rendering an Act

111 award which grants a pay or fringe benefit increase, the Panel must consider and accord substantial weight to:

- i. the approved financial plan; and
- ii. the financial ability of the [City] to pay the cost of such increase in wages or fringe benefits without adversely affecting levels of service.

53 P.S. § 12720.290(k)(l). The Panel also must make a written record of the factors it considered when making its determination according substantial weight to the approved five-year plan and the City's ability to pay. 53 P.S. § 12720.290(k)(2).

During the course of this Act 111 proceeding, both parties raised arguments regarding the City's financial condition and ability to pay for this Award within the confines of the approved five-year plan. In making this Award, the Panel has carefully reviewed and considered the testimony of the witnesses and the exhibits submitted by the parties, as well as statements made by both parties in support of their respective positions. This Panel has duly considered the parties' arguments and has accorded the City's financial concerns the substantial weight required by law.

I. FINDINGS AND REASONING

In light of the PICA Act's requirement that the Panel make findings, supported by substantial evidence in the record, that the City has the ability to pay the cost of the Award without adversely affecting service levels, the Panel has carefully considered the evidence and the contentions of the parties and makes the findings set forth herein.

1. The City is statutorily required to maintain a balanced budget.
2. The City is also required to submit to PICA for approval a revised five-year plan that is balanced in each of its years whenever it appears that the City's budget is no longer balanced as a result of unplanned revenue decreases or expense

increases. The City is required to provide quarterly updates to PICA showing how actual results and current projections compare to those contained in the approved five-year plan.

3. PICA can require the City to make mid-year adjustments if there is a variance from the approved five-year plan. Because the City is prohibited by law from enacting mid-year tax increases, such adjustments generally must come from service reductions.

4. The City experienced a significant financial crisis beginning in Fall 2008 as the nation experienced the Great Recession. The 2009-2014 interest arbitration award (2009-2014 Award), which was issued in December 2009, reflected the City's financial condition. Among other changes, the 2009-2014 Award required the FOP to restructure its health care delivery program, over the FOP's objection, to a self-insured program.

5. This change has proved extremely successful, with the FOP's benefit program, administered by LEHB, keeping cost increases far below the market while offering a benefit program tailored to the needs of police officers with an unrivaled level of service.

6. After the 2009-2014 Award was issued, the City's financial condition worsened. The City's FY2011 year-end fund balance was only \$92,000.

7. During the intervening years, the City's financial condition improved as the City recovered from the effects of the Great Recession and the City's fund balances rebounded. In fact, the City's fund balance at the end of FY2019 was more than \$400 million, which was above the City's internal target level.

8. Unfortunately, the COVID-19 pandemic has eroded that growth. In fact, at the time of the hearings, the City's finances continued to reflect the effect of the COVID-19 pandemic, which resulted in an estimated FY2021 year-end fund balance of only \$79 million.

9. Although the national economy is growing and is projected to remain strong through 2024, and the City's FY2022-2026 Five-Year Plan (FY2022-2026 Plan) reflects that the City's economy will grow as the pandemic wanes, it also projects fund balances below the City's economic target.

10. Although fund balances are projected to remain below the City's economic targets, the Panel recognizes that the City's fund balance was above its target in FY2018 and FY2019, before the pandemic, and the City is projected to continue to maintain positive General Fund balances during the FY2022-2026 Plan as required by law.

11. The Panel notes that the City's projections in the FY2022-2026 Plan reflect the impact of \$1.4 billion in funding over the next two years from the

American Rescue Plan. Without that funding, the City would face a \$450 million budget shortfall for FY2022.

12. The parties presented expert testimony regarding the City's financial condition and projections regarding the national and City economy over the next five years. The FOP also presented testimony regarding the accuracy of the City's projections over the past several years. All of this testimony was taken into account in reaching this Award.

13. As did the panel that issued the 2017-2020 Interest Arbitration Award (2017-2020 Award), the Panel concludes that the City has acted responsibly in reaching its five-year plan forecasts. The Panel notes that those forecasts, at least in times of strong economic growth, have sometimes proved more conservative than the actual revenues. Similarly, the Panel recognizes that the City faces significant uncertainty regarding how the City's economy will recover from the economic effects of the pandemic, particularly as cases in Philadelphia and the nation are once again on the rise, which could lead revenues to be significantly below the City's forecasts, as happened in FY2020 and FY2021.

14. The Panel also notes that the City continues to face economic and demographic challenges, including high poverty levels, which create a large demand for social services, and the City's responsibility for both city and county government services, which comparator cities largely do not bear.

15. Despite recent improvement, the City's poverty rate, at more than 23%, is the highest of the nation's ten largest cities, and much higher than that of the state or the nation as a whole, as is its deep poverty rate.

16. However, the Panel notes that the City's median household income and mean household income have increased 38% and 47.5% respectfully between 2010 and 2019.

17. The Panel notes that, at least until the pandemic, the City's economic condition improved since the Chair last served on an interest arbitration panel involving the City and the FOP in 2002. The Panel also notes that the economic improvements that the FOP has received during the intervening years has outperformed the City's economic growth as a whole and has led to the City's compensation for its police officers being far more competitive with comparator cities today than it was in 2002.

18. The City's contracts with all of its unions expired June 30, 2021. The City's FY2022-2026 Plan assumes \$200 million in economic improvements through these contracts over the life of the Plan.

19. The Panel notes that police wages remain at the median of other comparator cities and fall below median at the 15th year of service. However, the Panel also notes that the health and welfare benefits that FOP members enjoy are stronger

than those of other comparator cities and national benchmarks, with lower co-pays and no deductibles or employee premium contribution.

20. In addition to the economic challenges of the past 18 months during the pandemic, the Panel also notes the significant challenges faced by the Police Department.

21. The Panel recognizes and commends the work of the vast majority of police officers who come to work every day and serve in a manner consistent with the Police Department's values of honor, service and integrity.

22. The Panel also recognizes that this work has been made more difficult by the increase in shootings and homicides that the City is facing, even as the number of police officers is hundreds of officers below budgeted levels.

23. The Panel recognizes that the rise in violence has created new stresses on police officers, including additional dangers associated with policing. The Panel notes the significant reduction in officer-involved shootings in recent years despite the overall increase in City shootings.

24. The Panel also recognizes and commends the extraordinary effort made by police officers to save lives, including transporting shooting victims to hospital to save lives without waiting for ambulances to arrive in the most dire of situations.

25. At the same time, the Panel recognizes that the murder of George Floyd by a police officer in Minneapolis, along with other high-profile incidents involving police and people of color around the country and in Philadelphia, have led to community distrust of the police in many areas.

26. The Panel notes the testimony of Police Commissioner Danielle Outlaw, who joined the Department in 2020, on the Department's Crime Prevention & Violence Reduction Action Plan focused on organizational excellence, crime prevention and violence reduction and community engagement and inclusion.

27. The Panel was impressed by the testimony of Commissioner Outlaw, leadership of Mayor Kenney's administration and members of the community about the need to reform the discipline and arbitration process to restore the community's faith in the police.

28. At the same time, the Panel was also impressed by the leadership of FOP President John McNesby and the testimony of FOP representatives regarding the difficult and dangerous work performed by Philadelphia's police officers, and the need for police officers to view the disciplinary process as trustworthy and credible.

29. The Panel believes that changes in the Police Board of Inquiry process, including several of those identified by the Police Advisory Commission, will go a long way to improving confidence in the process on the part of police officers and the public.

30. Similarly, the Panel believes that changes in the discipline code are critical to hold officers accountable when they violate key department policies, including increasing reckoning periods in a number of areas. On the other hand, it is important that the code is not too harsh and so the Panel declines to make all of the changes sought by the City, including eliminating the penalty range of reprimand to dismissal on a number of charges.

31. The Panel believes that the creation of an arbitration panel to hear police discharge cases with arbitrators who are selected by the parties and trained to understand the disciplinary code and police directives will give both the public and police officers additional confidence in the arbitration process. The Panel declines to limit the authority of those arbitrators to issue awards consistent with the discipline code.

32. The Panel recognizes that the Commissioner has sought a rotation system for officers in specialized units. However, the Panel also recognizes that the 2014-2017 Interest Arbitration Award awarded a rotation for officers in the narcotics and internal affairs units that has never been implemented. Rather than create a new rotation program for specialized units, the Panel believes that it is appropriate to give the parties an additional opportunity to implement the existing rotation.

33. The Panel recognizes that the Department is in the process of conducting an analysis, using an outside consultant, of roles within the Department that can be done by civilians to maximize the use of sworn police resources and use limited resources efficiently. The Panel believes that it is premature to consider awarding any changes in this area but believes that it is appropriate to create a process for the City and the FOP to discuss any such proposals and the Panel will retain jurisdiction if the City seeks to pursue changes after such discussions.

34. The Panel recognizes the concerns raised by the FOP regarding sharing of information with the District Attorney's Office and the disclosure of that information. These difficult issues are the subject of ongoing litigation and constitutional and statutory obligations of the City. As a result, the Panel declines to involve itself in this area. Instead, the Panel has imposed a notification obligation on the Department and has directed the parties to further discuss a framework for notification when information is sent to the District Attorney's Office.

35. The Panel recognizes that this Award addresses areas that will have a significant impact on the Department and the lives of officers and the public. In doing so, the Panel has sought to strike a balance with the needs of the officers who put their lives on the line to protect the public every day as well.

36. Accordingly, the Panel has awarded wage increases that are intended to reflect the extraordinary demands placed on officers by current conditions, including the level of violence in the City, while also reflecting the City's financial condition and the threats that the City faces.

37. The Panel recognizes that the FOP has sought improvements in its pension and health benefits and the City has sought to increase the cost of health benefits for officers. The Panel declines to award either side the benefit changes they propose.

38. Due to the City's efforts and the sacrifices made by officers in past awards, the level of funding in the pension fund has improved, but the fund is still only 52% funded with a nearly \$6 billion unfunded liability. As a result, the Panel believes that pension improvements are not appropriate at this time.

39. The Panel likewise has decided not to award any changes in the current health benefit program. Although the Panel recognizes that the benefits of these employees are extraordinarily generous, the Panel also recognizes that LEHB has made extraordinary efforts to provide the highest quality and most innovative benefits to officers while moderating costs. The Panel takes note of LEHB's efforts to actively reduce costs and recover funds, which benefits the City. As a result, City costs are significantly below those of the firefighters' health plan for the same level of benefits and increasingly at a rate far lower than projected trends.

40. Finally, the Panel is convinced that the current level of reserves in the FOP's health fund is unnecessary given the stability of the current funding system for health benefits, which has now been in place for more than 10 years.

II. AWARD

1. Term: July 1, 2021 through June 30, 2024

2. Wages:

a. 2.75% increase effective July 1, 2021

b. 3.50% increase effective July 1, 2022

c. 3.50% increase effective July 1, 2023

3. Health and Welfare:

a. In light of the excellent administration of the health fund by the Joint Board and LEHB which has led to LEHB having assets in excess of \$70 million while providing exceptional benefits and service to members and their families, the City shall not be responsible for the payment of any expenses for administration or claims incurred for the first full month following the issuance of the Award.

b. For the same reason, the City shall not be responsible for the payment of any expenses for administration or claims incurred for the month of July 2023.

c. The City will make an annual payment of \$25,000 to the Joint Trust to subsidize outreach efforts to provide pastoral care, crisis ministry and spiritual enrichment opportunities for bargaining unit members.

d. The Panel has determined that it is appropriate for officers and their families to share in the benefit of the cost moderation that the Joint Board and LEHB have achieved over the course of the past 10 years, including extraordinary efforts to negotiate financial arrangements that reduce costs and pursue cost recovery. In recognition of these efforts, within 60 days of the issuance of the Award, the City shall pay each bargaining unit member as of the date of the Award a one-time cash payment of \$1,500, less required deductions and withholdings.

4. Grievance and Arbitration: Arbitration of grievances involving the termination of bargaining unit employees shall be governed by the attached Police Termination Arbitration Board procedures.

5. Retiree Trust Fund:

a. Within 30 days after issuance of the Act 111 Award, the City shall make a lump sum payment of \$4.5 million to the Retiree Joint Trust Fund.

b. On or before July 1, 2022, the City shall make a lump sum payment of \$4.5 million to the Retiree Joint Trust Fund.

c. On or before July 1, 2023, the City shall make a lump sum payment of \$4.5 million to the Retiree Joint Trust Fund.

6. Uniform Allowance: The amount of the allowance shall be increased by \$200 annually to compensate officers for business use of personal devices.

7. Commanders:

a. Effective July 1, 2023, Commanders who do not receive the 8% District Commander differential in Article 17(I) of the CBA shall receive a 2% differential.

b. Effective January 1, 2024, all Commanders shall have their compensation adjusted to reflect the 8% District Commander differential in Article 17(I). Commanders who already receive the 8% differential shall not experience any additional increase.

8. Holidays:

a. Effective June 2022, Juneteenth shall be added as a City-recognized holiday.

b. For purposes of the CBA, Columbus Day shall be known as National Columbus Day/Philadelphia Indigenous Peoples Day.

9. Catastrophically Disabled Officer: Officer Andy Chan shall be considered catastrophically disabled for purposes of Section 14(G)(1) of the CBA.

10. Transfers: The time periods for initiating the rotation of officers in special units under Article 22(I)(3) of the CBA will begin 90 days after issuance of the Award.

11. K-9 Officers: Officers who are assigned the K-9 unit and are required to care for an assigned police dog off duty will be provided an additional two hours per week of compensatory time to compensate them for the time spent caring for the dog(s).

12. Heart and Lung:

a. Heart and Lung procedures only apply to officers who are injured while engaged in any activity, assignment, duty, or function involving the protection of life and property, enforcement of laws, and/or investigation of crimes. This standard for performance of duties is consistent with the essential functions of a patrol officer, namely, the use of firearms, patrolling and the apprehension of suspects. Performance of duties does not include administrative assignments that may be incident to the job but are not the primary functions of a police officer.

b. The time period for striking a neutral arbitrator from the Heart and Lung panel under paragraph 16 of the 2014-2017 Act 111 Award shall run from October 1-October 15 each year unless different dates are agreed upon by the parties.

13. Civilianization: If, during the term of the Award, the City seeks to engage non-bargaining unit personnel to perform work that has been performed by the bargaining unit, in whole or in part, the City will provide the FOP with at least 30 days' advance notice of its intent to hire or utilize civilians or other individuals outside the bargaining unit to provide any such services or perform any such work in order to provide the parties an opportunity to review the proposed reallocation of work. Unless the time limits are extended by mutual agreement, either party may request interest arbitration over the proposed reallocation of work within 30 days following the end of the 30-day notice period. If the FOP fails to do so, the City shall be permitted to move forward with its proposal. Any interest arbitration so convened shall not be considered a re-opening of the contract, but shall be limited to the dispute submitted and, in the event that work is reallocated or shared, whether any changes are necessary to the CBA to carry out that change in work and whether any economic changes for the FOP bargaining unit are warranted. The Panel shall retain jurisdiction to hear any request for interest arbitration under this paragraph.

14. Notice of Release of Information: Except where the District Attorney's office has advised the City that the officer is the subject of investigation into

potential criminal proceedings, the Police Department—on the same day that it provides responsive records to the District Attorney’s Office—will notify the FOP of the request and provide the following information about what has been provided to the District Attorney’s Office: the name and badge number of the officer, the Internal Affairs case number, and the PBI case number, if applicable. The parties will develop a written protocol governing such notification.

15. Examinations: Article 22 of the CBA shall be revised to replace “second certification” with “final certification.”

16. Parental Leave: Employees will be eligible for up to four (4) weeks of paid parental leave, which shall be administered subject to the provisions of Civil Service Regulation 22.124.

17. COVID-19: If the City proposes to implement mandatory vaccines and/or regular testing during the term of the Award, the Panel will retain jurisdiction to resolve any disputes over the implementation of such a program.

18. Discipline:

a. The Discipline Code shall be replaced with the attached revised Disciplinary Code.

b. The Department shall revise the disciplinary and Police Board of Inquiry (PBI) procedures to include the following:

(1) Officers may be required to attend an Internal Affairs interview while on injured on duty (IOD) status unless a medical professional determines that they are not medically fit to do so.

(2) Officers will be offered the opportunity to make a voluntary statement to Internal Affairs at the beginning of the investigation. Internal Affairs will not consider the officer’s failure to do so an admission of any wrongdoing.

(3) Officers who are the subject of pending criminal charges will have the opportunity to make a voluntary statement to Internal Affairs during the pendency of the criminal charges. Internal Affairs will not consider the officer’s failure to do so an admission of any wrongdoing.

(4) Disciplinary charges may be determined by an individual or committee determined by the City which may include City personnel outside the bargaining unit and/or individuals under contract with the City who agree to be subject to confidentiality restrictions.

(5) The Department may be represented at PBI hearings by anyone selected by the Department, which may include City personnel outside the bargaining unit and/or individuals under contract with the City.

(6) PBI panels will be comprised of no less than three members—at least one civilian and two sworn employees of higher rank than the charged employee (in the case of discipline against sworn employees). The members of each PBI Board will be drawn from a fixed group of officers and civilians selected by the Commissioner. All eligible PBI Board members will receive training regarding Department directives and expectations for Department employees and officers. This training will include how and when prior disciplinary records may be used in PBI proceedings consistent with how it could be used in an arbitration or other legal proceeding (e.g., during consideration of the appropriate penalty, to prove notice in appropriate cases, for impeachment).

(7) The office of the Department Advocate may designate someone to manage the administrative functions of the hearing, including administering the oath to witnesses and explaining the standard of evidence and instructions to the members of the PBI Board.

(8) The office of the Department Advocate shall provide all pre-hearing discovery to the FOP and the officer/officer's legal counsel at least three business days in advance of the PBI hearing.

(9) During the course of the hearing, if the PBI Board learns of information that would necessitate additional and/or different charges or wishes to remand for further investigation, the Department Advocate may amend the charges during the hearing or request a continuance to amend the disciplinary charges and/or remand for further investigation and reschedule the hearing to the earliest date possible. The Department Advocate may also request a continuance to ensure proper notice of the amended charges and hearing is provided to the charged employee and relevant witnesses.

(10) After the presentation of evidence, each member of the PBI Board shall complete a voting sheet indicating their finding of "approve" or "disapprove" the disciplinary code violations. All members of the PBI Board shall provide their reasoning for each finding and any penalty recommendation(s). Alternatively, at the request of the Department Advocate at the start of the hearing, each member of the PBI Board will complete a form and respond to individual questions regarding whether the charged employee's actions are violative of Department directive(s). Where such forms are used, any member of the PBI Board who finds the charged employee committed actions in violation of Department directive(s) shall list their penalty recommendation and the reasoning for the recommendation.

(11) The Department can make other changes necessary to effectuate the Citizen Police Oversight Commission legislation enacted by City Council, but only with the written consent of the FOP regarding any matters that involve a mandatory subject of bargaining.

(12) All civilians who participate in the determination of disciplinary charges and the PBI process pursuant to items 4 and 6 of this section must

be City employees and/or individuals under contract with the City who agree to be subject to confidentiality restrictions. Any civilians who serve as PBI panel members who are not City employees or attorneys under contract with the City will undergo a background investigation conducted by the Police Department background investigation unit, which will include a criminal background check and questionnaire and other elements determined by the Police Commissioner, before serving on any PBI panels.

III. CONCLUSION

All remaining terms and conditions of employment not expressly modified by this Award or previously agreed to by the parties in negotiations shall remain “as is” through June 30, 2024. All proposals of the parties not included in the Award are denied.

It is understood that the signature of the Arbitrators attest to the fact that the contractual changes represent the majority opinion and Award on each issue by the members of the Arbitration Panel.



Alan Symonette
Neutral Arbitrator and Panel Chair

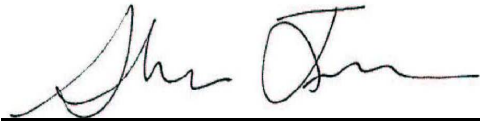
Date: 9-14-2021



Ralph Teti
FOP-Appointed Arbitrator

Date: 9-14-21

Concur x Dissent



Shannon Farmer
City-Appointed Arbitrator

Date: 9-14-21

Concur Dissent as to Paragraph 2 (see attached)

Police Termination Arbitration Board

A. Generally

Arbitration of grievances protesting terminations of police officers shall be conducted in accordance with the procedures listed below.

Effective with demands for arbitration filed more than 90 days after the issuance of the interest arbitration award, unless the parties agree to a different date, all demands for arbitration involving disciplinary terminations of police officers will be heard by a member of the Police Termination Arbitration Board (PTAB).

All matters not addressed below, and arbitration of all other grievances, will continue to be governed by the parties' existing procedures and the labor arbitration rules of the American Arbitration Association (AAA).

B. PTAB Arbitration Procedures

1. The parties will select a panel of no fewer than 10 arbitrators to hear arbitrations involving terminations.
2. Initially, the parties shall attempt to agree on any even number of mutually-acceptable arbitrators to be included in the PTAB by submitting a list of proposed arbitrators to the other party within 45 days of the issuance of the Award. The parties shall have 15 days to respond to each other's lists. Any arbitrators deemed mutually acceptable shall be added to the panel. Thereafter, each party will submit a list of neutral arbitrators to also serve on the panel within 15 days of the conclusion of the mutual appointment process. The number of arbitrators submitted by each party will be determined by the number of arbitrators on the panel less the number of mutually-acceptable arbitrators, if any, divided by two. For example, if the parties agree to four (4) mutually-acceptable arbitrators, each party will submit a list of three (3) arbitrators to serve on the panel. Before being placed on the panel, the arbitrators must commit in writing to being available to hear at least five (5) cases per year.
3. PTAB arbitrators need not be on AAA's list of approved labor arbitrators; however, arbitrators must either possess a J.D. degree or have at least two (2) years of experience as a labor arbitrator or labor relations professional. PTAB arbitrators must also agree to be subject to the requirements of the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.
4. At least forty percent (40%) of the PTAB arbitrators will be people who identify as women, people of color, members of the LGBTQ+ community, or other underrepresented groups.
5. Any arbitrator selected to serve on the PTAB must attend a training session put on jointly by AAA and the representatives of the parties on applicable law and

processes, as well as any other topics agreed to by the parties. The Panel will retain jurisdiction over any disputes regarding the training curriculum. There will be no delay in assigning cases to PTAB arbitrators once trained. Any third party costs of this training, including any charges by AAA or any arbitrators, will be borne by the City.

6. Cases will be assigned to the arbitrators using a wheel based on the date the demand for arbitration is received by AAA. The arbitrators will be placed on the wheel in the order in which they were named, alternating by the party who named the arbitrator so that cases are assigned alternately to mutually-agreed upon arbitrators, City-named and FOP-named arbitrators. AAA will be responsible for maintaining the wheel and assigning the cases. Once the cases are assigned to an arbitrator, they will not be reassigned absent agreement of the parties or the arbitrator's declination of the case, except as described below. Any case which is reassigned will be assigned to the next arbitrator on the wheel at the time the reassignment occurs.
7. Once assigned, PTAB arbitrations will be scheduled in accordance with AAA's normal scheduling procedures.
8. From October 1 through October 15 each year, the party who named the arbitrator may provide notice to AAA and the other party that it is removing the arbitrator from the panel. Unless the parties agree otherwise (see below), the arbitrator will complete any cases that are already assigned to them. There is no limit to the number of arbitrators it appointed that a party may remove each year.
9. In addition, from October 1 through October 15 each year, a party may remove up to two (2) arbitrators who were named by the other party or mutually-agreed upon for any reason. Unless the parties agree otherwise, any arbitrators so removed will complete any cases already assigned to them.
10. The parties may jointly agree to remove an arbitrator from the panel at any time. Unless the parties agree otherwise, when an arbitrator is removed by agreement, the arbitrator will complete any cases the arbitrator has already heard, but any cases that have not yet been heard will be reassigned to the next arbitrator on the wheel at the time the reassignment occurs.
11. When an arbitrator is removed, the party who named that arbitrator will be responsible for naming a replacement arbitrator. Any arbitrator so named will attend the training described above, which will be scheduled within 30 days of when the arbitrator(s) are named so as not to delay the assigning of cases to those arbitrators. The same procedures will be followed if an arbitrator resigns from the panel.
12. Any arbitrator who is removed cannot be named to the panel again by any party for a period of at least two (2) years unless the parties agree otherwise.

C. Rules and Standards of PTAB Arbitration

1. Except as provided herein, the AAA labor arbitration rules shall continue to govern the proceedings.
2. These procedures may be modified by the mutual agreement of the parties.

PHILADELPHIA POLICE DEPARTMENT



DISCIPLINARY CODE

September 2021

Introduction

The intent of this Disciplinary Code is to instill and support the core values of the Philadelphia Police Department by establishing fair and consistent penalties for violations of Philadelphia Police Department rules, policies, and principles. The Articles herein are intended to direct the Police Board of Inquiry and all Commanders in administering such fair and uniform penalties. This code shall apply to all personnel of the Police Department. The core values of the Philadelphia Police Department are:

Honor - It is a privilege to serve as a member of the law enforcement community and especially as a member of Philadelphia Police Department. Each day when you pin on your badge, remember those who went before you and the sacrifices made in the name of this badge. Treat your badge with honor, respect, and pride. Do nothing that will tarnish your badge, for one day you will pass it to another Philadelphia Police officer to honor and respect.

Service - Service with honor means providing police service respectfully and recognizing the dignity of every person. We can demand that others respect and honor our work only when we respect them and their rights. We are in the business of providing police service with the highest degree of professionalism. Every day we come into contact with crime victims, residents afraid to enjoy their neighborhoods, and young people scared to stand up and do the right thing. Our job is to help them and to do so with courtesy and compassion.

Integrity - Integrity is the bedrock of policing and the foundation for building a successful relationship with our partners. Integrity means reflecting our values through our actions. It is not enough to espouse honor, service and integrity. Each of us must live these values in our professional and personal lives. We do this by being honest in our dealings and abiding by the laws and respecting the civil rights of all. Serving with integrity builds trust between the community and the police.

Members of the Philadelphia Police Department must be morally and ethically above reproach at all times regardless of duty status. All members shall respect the sanctity of the law and shall be committed to holding themselves to the highest standard of accountability. No member shall depart from standards of professional conduct or disobey the law.

The following code includes specific behaviors that have been identified as violating this standard. However, to the extent that an employee's actions are not specifically described in this code, but have the effect of impairing the employee's

ability to perform his or her duties, then the employee may be charged under the “Unspecified” Charges.

Penalties recommended by either the Police Board of Inquiry or commanders for offenses listed shall be within the prescribed limits. The Disciplinary Code shall in no way limit any penalty which the Police Commissioner may impose. The Police Commissioner is the final authority on all disciplinary matters.

Transfer may be imposed for all disciplinary infractions.

Demotion may be imposed for all disciplinary infractions.

The “reckoning period” as used in this code is that period of time during which an employee is expected to have a record free of the same type of offense. All reckoning periods shall be completed from the date the first offense was committed. For subsequent violations to apply, it must be shown that the employee was provided formal notice (75-18s) of the first violation. Second and subsequent violations of the same section committed during the relevant reckoning period shall be treated as second or subsequent offenses. The same type of offenses committed after the reckoning period expires counts as a first offense. If the individual is found not guilty of a first offense at a Police Board of Inquiry hearing; then a second offense charged would be considered a first offense within the reckoning period.

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ARTICLE I

CONDUCT UNBECOMING

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
1-§001	Unspecified	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
1-§002	Accepting bribes or gratuities for permitting illegal acts.	Dismissal	-----	-----	-----
1-§003	Failure to immediately report, in writing to their Commanding Officer, offers of bribes or gratuities to permit illegal acts.	10 days to Dismissal	Dismissal	-----	Duration of Employment
1-§004	Failure to officially report corruption, or other illegal acts.	10 days to Dismissal	Dismissal	-----	Duration of Employment
1-§005	Failure to stop, or attempt to stop, an officer using force when that force is no longer required.	10 days to Dismissal	Dismissal	-----	Duration of Employment
1-§006	Soliciting for attorneys, bondsman, tow operators or other unauthorized persons.	30 days or Dismissal	Dismissal	-----	Duration of Employment
1-§007	Knowingly lying under oath to any material facts in any proceeding.	Dismissal	-----	-----	-----
1-§008	Failure to cooperate in any Departmental investigation.	10 days to Dismissal	30 days or Dismissal	Dismissal	Duration of Employment
1-§009	Lying or attempting to deceive regarding a material fact during the course of any Departmental investigation.	10 days to Dismissal	Dismissal	-----	Duration of Employment
1-§010	Knowingly and willfully making a false entry in any Department record or report.	10 days to Dismissal	Dismissal		Duration of Employment

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
1-§011	Abuse of authority	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
1-§012	Unauthorized and / or excessive use of force in your official capacity.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
1-§013	Knowingly and intentionally associating, fraternizing or socializing with persons actively engaged in criminal conduct or an organized effort advocating criminal behavior against any individual, group or organization on the basis of race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity; or fugitives from justice; or others that compromises, discredits, prejudices or otherwise makes suspect an employee's authority, integrity, or credibility.	10 days to Dismissal	Dismissal	-----	Duration of Employment
1-§014	Fighting / quarreling with members of the Department while one or both are on duty.	Reprimand to 10 days	10 to 20 days	20 days to Dismissal	5 Years
1-§015	Engaging in threatening, or harassing, intimidating, or like conduct towards another member of the Police Department.	Reprimand to 10 days	10 days to Dismissal	20 days to Dismissal	5 Years
1-§016	Inappropriate language conduct or gestures to Police Department employees while on duty.	Reprimand to 10 days	10 to 15 days	15 to 20 days	5 Years
1-§017	Inappropriate language conduct, or gestures to the public while on duty.	Reprimand to 10 days	10 to 15 days	15 to 20 days	5 Years

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
1-§018	Sexual behavior while on duty.	30 days or Dismissal	Dismissal	-----	Duration of Employment
1-§019	Sexual behavior in a City, state, or federally owned or leased vehicle or facility while off duty.	30 days or Dismissal	Dismissal	-----	Duration of Employment
1-§020	Repeated violations of any Departmental rules or regulations.	30 days or Dismissal	Dismissal	-----	Duration of Employment
1-§021	Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.	30 days or Dismissal	Dismissal	-----	Duration of Employment
1-§022	Any act, conduct or course of conduct which objectively constitutes discriminating or harassing behavior based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
1-§023	Inappropriate communication(s) based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity conveyed in any manner.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
1-§024	Any act, conduct or course of conduct which objectively constitutes sexual harassment.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
1-§025	On duty or job-related inappropriate sexually based communication(s) conveyed in any manner.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
1-§026	Engaging in any action that constitutes the commission of a felony or a misdemeanor which carries a potential sentence of more than (1) year. Engaging in any action that constitutes an intentional violation of Chapter 39 of the Crimes Code (relating to Theft and Related Offenses). Also includes any action that constitutes the commission of an equivalent offense in another jurisdiction, state or territory. Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.	30 Days or Dismissal	Dismissal	-----	Duration of Employment
1-§027	Engaging in threatening, or harassing, intimidating, or like conduct towards a member of the public.	5 to 10 days	10 to Dismissal	Dismissal	5 Years

ARTICLE II

ABUSE OF ALCOHOL/CONTROLLED SUBSTANCES / PRESCRIPTION DRUGS

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
2-§001	Unspecified	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
2-§002	Drinking alcoholic beverages while on duty.	30 days or Dismissal	Dismissal	Dismissal	Duration of Employment
2-§003	Odor of alcohol on breath while on duty.	Reprimand to 10 days	10 to 15 Days	30 Days or Dismissal	5 Years
2-§004	Impaired on duty.	30 days or Dismissal	Dismissal	-----	Duration of Employment
2-§005	Intoxicated off duty in full or partial uniform.	5 to 10 days	10 to 20 days	25 to 30 days	5 Years
2-§006	“Driving under the influence” off duty.	30 days or Dismissal	Dismissal	-----	Duration of Employment
2-§007	“Driving under the influence” pleas, convictions or ARD under one of the following circumstances: (a) second or subsequent DUI offense while employed by the City of Philadelphia within the reckoning period (regardless of whether or not off duty); (b) involving a hit and run of a person, vehicle or property; or (c) operating, driving or physically controlling a City, State, or Federally owned / leased vehicle.	30 days or Dismissal	Dismissal	-----	Duration of Employment
2-§008	Operating, driving or physically controlling a City, State, or Federally owned / leased vehicle after imbibing in any amount of alcohol and / or illegal substance.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
2-§009	Socializing or drinking in an alcoholic beverage establishment in full or partial uniform while off duty.	Reprimand to 5 days	5 to 10 days	10 to 15 days	5 Years
2-§010	Constructive or actual possession of alcoholic beverages not related to the legal confiscation of same while on duty.	Reprimand to 10 days	10 to 20 days	20 to 30 days	5 Years
2-§011	Any use or ingestion of any illegal substances, prohibited under 35 P.S. §780-101 et seq.(Controlled Substance, Drug, Device and Cosmetic Act), or any substance that constitutes the commission of an offense under Federal law or in any other jurisdiction, State or Territory, either on or off duty.	30 days or Dismissal	Dismissal	-----	Duration of Employment
2-§012	Inappropriate use of a prescription drug.	10 days to Dismissal	Dismissal	-----	Duration of Employment
2-§013	Constructive or actual possession of a controlled substance not legally prescribed or related to the legal confiscation of same.	30 days or Dismissal	Dismissal	-----	Duration of Employment

ARTICLE III

ESSENTIAL REQUIREMENTS FOR DUTY

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
3-§001	Unspecified	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
3-§002	Inability to perform the essential duties of a sworn police officer as defined by the Municipal Police Officer Education and Training Commission (MPOETC);inability to or failure to maintain state certification under the MPOETC.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
3-§003	Prohibited from accessing, inputting or otherwise acquiring information from any law enforcement system, database, or program.	10 days to Dismissal	Dismissal	-----	Duration of Employment
3-§004	Failure to maintain a bona fide residence in the City of Philadelphia or Commonwealth of Pennsylvania consistent with the current collective bargaining agreement/civil service regulations.	Dismissal	-----	-----	-----
3-§005	Inability to legally operate a motor vehicle	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment

ARTICLE IV

INSUBORDINATION

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
4-§-001	Unspecified	Reprimand to 30 days	Reprimand to 30 days	Reprimand to 30 days	5 Years
4-§-002	Refusal to promptly obey proper orders from a superior officer.	5 to 30 days	15 days to Dismissal	Dismissal	5 Years
4-§-003	Profane, insulting, or improper language, conduct, or gestures toward, in the direction of, or in relation to, a superior officer.	5 to 10 days	15 to 30 days	Dismissal	5 Years
4-§-004	Threatening to or using physical force against a superior officer when either is on duty.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
4-§-005	Omitting title when addressing any superior officer.	Reprimand to 5 days	5 to 10 days	15 to 20 days	5 Years
4-§-006	Reporting off sick in response to receiving an assignment.	5 to 10 days	10 to 20 days	30 days or Dismissal	5 Years

ARTICLE V

NEGLECT OF DUTY

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
5-§001	Unspecified	Reprimand to 15 days	15 to 30 days	30 days or Dismissal	5Years
5-§002	Failure to take police action while on duty.	Reprimand to 10 days	10 to 30 days	30 days to Dismissal	5 Years
5-§003	Failure to properly patrol area of responsibility.	Reprimand to 5 days	5 to 10 days	15 to 20 days	5 Years
5-§004	Failure to respond to an assignment by any means transmitted. (Use of personal cell phones shall not be required by officers).	Reprimand to 5 days	5 to 15 days	15 to 30 days	5 Years
5-§005 ¹	Failure to make required written report.	Reprimand to 5 days	5 to 10 days	10 to 15 days	5 Years
5-§006	Failure to conduct a proper, thorough, and complete investigation.	Reprimand to 5 days	5 to 10 days	10 to 20 days	2 Years
5-§007	Asleep on duty.	Reprimand to 5 days	5 to 20 days	20 days to Dismissal	2 Years
5-§008	Unauthorized absence from assignment.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§009	Absence without leave for less than one working day	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§010	Absence without leave for a minimum of one working day, but less than five consecutive working days.	2 to 10 days	10 days to Dismissal	Dismissal	2 Years

¹ In accordance with EO 5-17(b)-(c), the first offense for charges under 5-006 and 5-007 is triggered after the officer first receives training/counseling for a lack of service/verbal abuse complaint.

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
5-§011	Failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§012	Failure to comply with the Department's Off Duty policy.	Reprimand to 10 days	5 to 15 days	15 to 20 days	2 Years
5-§013	Failure to comply with a court notice or subpoena.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§014	Allowing prisoner to escape through carelessness or neglect.	Reprimand to 10 days	15 to 20 days	25 to 30 days	5 Years
5-§015	Failure to take reasonable efforts to provide for the safety of prisoners while in police custody.	Reprimand to 5 days	5 to 10 days	15 to 20 days	5 Years
5-§016	Failure to remove keys from police vehicle when unattended.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
5-§017	Loss or damage to Police Department property resulting from negligence or from failure to properly care for same. (Excludes City owned weapons)	Reprimand to 5 days and restitution	5 to 10 days and restitution	15 to 20 days and restitution	2 Years
5-§018	Lost or stolen City owned weapon resulting from negligence or failure to restitution properly care for same.	Reprimand to 15 days and restitution	20 days to Dismissal and restitution	30 days or Dismissal and restitution	5 Years
5-§019	Failure to properly care for and maintain a police vehicle.	Reprimand to 5 days	5 to 10 days	10 to 20 days	2 Years

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
5-§020	Performing any activity on duty which does not relate to the duty assignment and which could interfere with the duty assignment.	Reprimand to 5 days	5 to 10 days`	10 to 20 days	2 Years
5-§021	Failing to submit form 75-350, Change of Personnel Data, as prescribed.	Reprimand to 5 days	5 to 10 days	10 to 20 days	1 Year

ARTICLE VI

DISOBEDIENCE

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
6-§001	Unspecified	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	2 Years
6-§002	Absence from official duties without proper authorization during a declared emergency in the City of Philadelphia by the Mayor, the Governor of Pennsylvania, the President of the United States or their designees.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	Duration of Employment
6-§003	Failure to immediately notify the Department about any involvement of which they are aware in criminal litigation as the defendant.	30 days or Dismissal	Dismissal	-----	Duration of Employment
6-§004	Failure to notify the Law Department of involvement in any civil action (whether a plaintiff, defendant or witness) arising from police duty within 5 calendar days.	Reprimand to 5 days	5 to 10 days	15 days to Dismissal	2 Years
6-§005	Soliciting without proper authorization.	5 to 10 days	10 to 15 days	20 to 30 days	2 Years
6-§006	Failure to follow Departmental procedures for the handling of evidence, personal effects, and all other property taken into custody except narcotics, money, explosives, firearms, hazardous materials or forensic evidence.	Reprimand to 5 days	5 to 10 days	15 to 20 days	5 Years

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
6-§007	Failure to follow Departmental procedures for the handling of narcotics, money, explosives, firearms, hazardous materials, or forensic evidence.	Reprimand to 5 days	5 to 10days	30 days or Dismissal	5 Years
6-§008	Discharging, using, displaying or improper handling of a firearm while not in accordance to Departmental Policy.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
6-§009	Improper or unauthorized use of Departmentally owned or leased equipment.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
6-§010	Communicating or imparting local, state, or federal law enforcement information without authority or to unauthorized persons.	Reprimand to Dismissal	15 days to Dismissal	Dismissal	2 Years
6-§011	Having or operating private vehicle on beat or driving to or from a post without authorization.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
6-§012	Failure to report on or off assignment as prescribed.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
6-§013	Tardiness	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§014	Unauthorized persons in police vehicle.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
6-§015	Carrying or possessing unauthorized equipment while on duty.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
6-§016	Wearing awards or citations on the uniform that have not been awarded.	Reprimand to 5days	5 to 10 days	15 to 20 days	1 Year

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
6-§017	When in uniform, failure to properly salute the Police Commissioner or a uniformed superior officer.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§018	Failure to give prescribed identification when answering the telephone.	Reprimand to 5 days	5 to 10 days	15 to 20 days	1 Year
6-§019	Refusal to give name and badge number when requested.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
6-§020	Failure to provide a member of the public with the procedure, information or form concerning a complaint against police.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
6-§021	Failure to notify the Department within 72 hours of initiating a private criminal complaint or being named in a private criminal complaint.	Reprimand to 5 days	5 to 15 days	15 days to Dismissal	2 years
6-§022	No one shall, without being subpoenaed and previously notifying the Chief Inspector of the Office of Professional Responsibility, appear or give testimony as a character witness for any defendant in a criminal trial or inquiry.	5 to 15 days	15 to 30 days	Dismissal	2 years
6-§023	Unapproved outside employment.	Reprimand to 5 days	5 to 10 days	10 to 20 days	1 Year
6-§024	Prohibited outside employment.	5 to 10 days	15 to 20 days	25 to 30 days	2 Years

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
6-§025	Willfully damaging Police Department owned or leased property and /or equipment.	Dismissal	-----	-----	-----
6-§026	Interference with Police Radio broadcasting.	Dismissal	-----	-----	-----
6-§027	Intentionally providing inaccurate, misleading, or deceptive information to Police Radio regardless of how communicated, on or off duty.	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years

ARTICLE VII

MOTOR VEHICLE VIOLATIONS

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
7-§001	Unspecified	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
7-§002	Involved in a preventable motor vehicle accident.	Reprimand to 3 days	3 to 5 days	5 to 10 days	1 Year
7-§003	Failure to follow Departmental procedures involving safe operation of a police vehicle [excluding pursuits and / or emergency driving].	Reprimand to 5 days	5 to 10 days	10 to 15 days	2 Years
7-§004	Failure to follow Departmental procedures involving pursuit and / or emergency driving.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years
7-§005	Failure to notify Commanding Officer in writing whenever PA Operator's License has lapsed, or expired.	Reprimand to 5 days	5 to 10 days	15 to 20 days	2 Years

ARTICLE VIII

FAILURE TO SUPERVISE

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	Reckoning Period
8-§001	Unspecified	Reprimand to 5 days	5 to 10 days	15 to 20 days	5 Years
8-§002	Failure to review, approve, input, submit or distribute all required reports, forms, documents or notifications in any medium.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years
8-§003	Failure to properly supervise subordinates.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years
8-§004	Failure to take supervisory action.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years
8-§005	Supervisors shall not personally solicit subordinates in any manner for any item unless authorized by the Police Commissioner or their official designee.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years
8-§-006	Threatening to or using physical force against a subordinate officer when either is on duty.	15 days to Dismissal and/or demotion	Dismissal	-----	Duration of Employment

BY COMMAND OF THE POLICE COMMISSIONER

ARBITRATION OPINION AND AWARD

American Arbitration Association

AAA Case # 0-21-0002-3120

**In the Matter of an Act 111 Interest Arbitration Between the
CITY OF PHILADELPHIA**

AND

**FRATERNAL ORDER OF POLICE,
LODGE 5**

**DISSENTING OPINION
OF CITY-APPOINTED ARBITRATOR**

September 14, 2021

Today, the interest arbitration panel (Panel) issued an Award in the Act 111 Interest Arbitration between the City of Philadelphia (the City) and the Fraternal Order of Police-Lodge 5 (the Union) that will govern the terms and conditions of employment for the City's police officers July 1, 2021 to June 20, 2024.

In most respects, the Award appropriately recognizes and attempts to balance the current reality for members of the unit—for over a year they have been on the frontlines fighting a public health crisis and now are in the midst of a gun violence pandemic that affects this bargaining unit more than any other group of employees. In addition to the increased demand on officers, the public has a heightened expectation for accountability for the members of the Police Department (the Department). In response to significant research by the Department and Police Advisory Commission and calls from members of the public, the Award provides some significant changes to the discipline and arbitration process to enhance accountability, fairness and transparency and the City lauds those changes.

However, because the Award disregards the City's ability to pay for its terms and fails to give any meaningful consideration to the impact of the Award on the City's financial condition, particularly given the effects of the pandemic, I dissent with respect to paragraph 2, regarding the wage increase over the three year contract period. Although I recognize that the wage package is reflective of the unique and extraordinary toll that the current state of violence is imposing on officers in this unit, along with the meaningful changes in the discipline process that the Award imposes, the Award does not do enough to consider the City's current fiscal challenges.

Impact on the Fund Balance

The Award provides for the following wage increases over the contract term:

- 2.75% increase effective July 1, 2021
- 3.50% increase effective July 1, 2022
- 3.50% increase effective July 1, 2023

These wage increases are projected to cost \$271.8 million over the life of the approved FY2022-2026 Five-Year Plan (Five-Year Plan)—more than the entire \$200 million approved in the current labor reserve for *all* of the City’s bargaining units. To push this number in context, the nearly \$272 million in added costs for police officers is more than the City’s Community College subsidy, more than the City’s Library budget, and more than the License & Inspection budget over the Five-Year Plan.

As Finance Director Rob Dubow and Budget Director Marisa Waxman explained in their testimony, the City was forced to draw down on its fund balance to survive the pandemic. The fund balance is a key indicator of the City’s financial health and helps ensure the City is able to be flexible and resilient to meet potentially changing cash flow needs. Since the 2008 recession, the City has made great strides in restoring the fund balance. Before the pandemic-induced recession, the City’s fund balance FY2019 year end fund balance was \$439 million. Yet, in FY2021 to continue delivering services, especially to the City’s most vulnerable populations, and minimize layoffs during the pandemic, the City was forced to draw down its reserves, ending the fiscal year at an estimated \$79 million balance—far, far below the Government Finance Officers Association (GFOA) recommendations and the City’s own internal goals, which target a fund balance equivalent to 6-8% of expenditures. Even without the wage increases imposed by this Award, the projected fund balances under the Five-Year Plan are below 3% of expenditures.

Incorporating the irresponsible wage increase under the Award, which average more than 3% per year of the contract, the City’s fund balance will be only \$50 million at the end

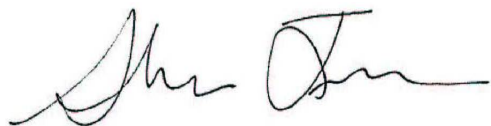
of FY2026. This fund balance, which is far below GFOA recommendations and the City's internal targets, is insufficient for the City to weather unexpected expenses that may arise due to the Delta Variant and the resurgence of COVID-19, not to mention provide raises for the City's other unionized employees whose contracts are also expired.

During the arbitration hearings throughout June and July 2021, the City was optimistic that the economy would continue to recover as people feel more comfortable working and shopping in the City. Now, as schools and offices are set to reopen, the City anxiously awaits to see how COVID-19 and the Delta Variant may impact this fragile return to in-person interaction.

In short, the wage increases under this Award are inappropriate in light of the City's financial condition. The City faces significant long-term and short-term challenges due to the impact of the pandemic, as well as its significant long-term and structural challenges, and every City employee and bargaining unit—including the FOP—should receive wage increases that reflect those difficult economic realities.

As the City works to recover from the pandemic, it must be strategic and mindful with its expenditures. The wage package awarded to the Union does not accord substantial weight to the Five-Year Plan and the City's ability to pay and jeopardizes the City's ability to provide critical services without making cuts contrary to the dictates of the PICA Act. Accordingly, I dissent from Paragraph 2 of the Award.

Dated: September 14, 2021

A handwritten signature in black ink, appearing to read "Shannon D. Farmer", written over a horizontal line.

Shannon D. Farmer
Arbitrator for the City of Philadelphia